

A visitor who steps off the elevator on the fourth floor of DEQ's Baton Rouge headquarters may immediately sense that this floor is a little different from the other five. While scientists, technical specialists, and regulators populate most of the headquarters building and all of the satellite regional offices, DEQ's Legal Division is housed on the fourth floor. It is here that a team of attorneys and support staff including paralegals and legal secretaries plays its part in the daily business of fulfilling the Agency's mandate to protect and enhance Louisiana's environment. "Legal," as the division is commonly known, is a critical component of DEQ's myriad of environmental functions and is staffed by professionals who must keep their fingers on the pulse of evolving environmental law.

Herman Robinson is DEQ's General Counsel and a certified public manager (CPM). He brings to the position of General Counsel a wealth of very relevant experience—three-and-a-half years of experience as the assistant secretary for DEQ's former Office of Legal Affairs and Enforcement and nine years of experience as an administrative law judge (ALJ) handling appeals of DEQ enforcement and permit actions exclusively. For the last five years of his stint as an ALJ, he served as administrator of the DEQ Hearings Division.

"When it comes to legal work, you name it and we do it," Robinson says. "We provide DEQ with legal services in the areas of permitting, enforcement, grants, contracts, personnel, legislation, inter-government agreements and such other matters as may be necessary." Robinson says the Legal Division is

divided into two primary sections, permitting and enforcement, which handle the bulk of the workload.

John King, a CPM, is the Chief Attorney for Enforcement:

"We provide vigorous representation for the Department. I think that anyone who believes that DEQ does not enforce the rules is wrong. We do a good job in dealing with the violations that we discover."

Jackie Marve is the Chief Attorney for Permitting. "We primarily advise and represent the Department in the formulation and appeal of permit actions. A permit applicant who wishes to contest the terms of his permit or the denial of his application may request a

hearing by filing such request with the Secretary. If the request is granted, an adjudicatory hearing may be conducted by a hearing officer with the Division of Administrative Law (DAL). 'Aggrieved persons' (i.e., someone whose interests may be adversely affected by the permit action) may appeal permit actions by filing a petition for judicial review with the 19th Judicial District Court. We

represent the Department in the proceedings conducted by DAL as well as in court proceedings. We also review rules and regulations for legal sufficiency."

"Working with the primary agency in the state concerned with environmental protection and regulation is both professionally and personally gratifying," Mrs. Marve says.

General Counsel Robinson says he has seen an increase in the number of cases that are handled by Legal since he joined DEQ in 1986 — and he has seen environmental case law grow. "Since then I've

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Counsel



John King
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Jackie Marve
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Attorney,
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requirements keep going up.

The loans provided are much cheaper than what most banks can give. DEQ tries to stay two points below the market rate for a 20 year bond and the town must pay the loan back, plus interest, within 20 years.

A town must go through a three-step process to receive a loan. The first step is the environmental part. The community requesting the loan must go through a NEPA (National Environmental Policy Act) review. It is a federal law that requires anyone receiving federal money to do a three-part review.

The first section of the review makes sure that the community will solve the problem that they have and observe any permits or regulations. The second section ensures that the construction is not going to damage the environment during the building process. This part of the review makes sure that they are not going to harm any flood plains or wetlands, threatened or endangered species, cultural resources, prime farmland, or national forests. The community must give state and federal agencies a list of the steps that they intend to take and a map for them to comment on. If something is wrong with the plans, the agencies will give stipulations regarding the building.

The third section of the review consists of public participation. DEQ requires a community under consideration to hold a public hearing to notify everyone in the area of what they are going to build and how much it will cost the customers. DEQ and DHH attend those hearings to make sure

the leaders address all the topics that they are supposed to cover.

Once the three-part NEPA review has been completed, DEQ will issue a FONSI (Finding of No Significant Impact). It describes the project, what impacts it is going to have on the local community, and whatever mitigation needs to be done. The Agency will then distribute a copy of the FONSI to other state agencies and publish a summary in the local newspaper.

The second step of the loan process consists of the engineering review. The city must provide DHH with a System Improvement Plan (SIP) that tells the Agency what they are going to build and what problems must be solved. DHH requires the town to plan for 20 years in advance, which entails looking at population projections and what other industries might come to the town.

The engineer the town hires then designs the facility that they have indicated in the SIP and submits the design to DHH for review. The Agency reviews the designs to see if it is what the town said it was going to build and that the plans meet all state and federal requirements for the necessary permits. The plans are then approved to go out for bids.

This is the point at which DEQ and DHH can offer the town a loan.

A financial review is performed during this time, reviewing three years of the community's audited financial records to verify that they have the funds to cover the loan. The town needs to

have a dedicated source of revenue such as user fees, sales or property tax before the loan can be awarded.

The town, however, does not receive the money in a lump sum. The community must start the work and give DEQ the bill. Only then can they receive money. Once the project begins, DHH engineers visit the construction site once a month to inspect the work to make sure it is being done properly. The town starts paying interest as soon as construction begins and they have two years to finish building before they have to pay back the principal.

DEQ provides a similar, but separate loan program for wastewater. Congress passed the law for this program in 1987 and DEQ gave its first wastewater loan in 1990 to Ruston. Since that time, 40 communities have been granted loans. The differences between the two funds are that the Clean Water (wastewater) State Revolving Fund does not lend money to private systems or allow a town to buy land. DEQ does the engineering and DHH is not involved.

DEQ has been administering a wastewater loan program for approximately 10 years. It is an outgrowth of a grant program that had been in place for 20 years or more before its introduction. DEQ's Catherine Lundergan who is overseeing the environmental review, said, "It took us a couple of years to get all the communities geared to the fact that we're no longer giving grants; now we're giving loans."